



Kansas Department of Health and Environment

Adult Care Home Program

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Assisted Living/Residential Health Care Facility Regulations

The current draft of the assisted living/residential health care facility was reviewed by the Adult Care Home Advisory Group on March 15. Written comments were received from committee members. The bureau is in the process of reviewing those comments. It is anticipated that proposed regulations will be completed within the next two weeks. A committee of four providers of assisted living and residential health care were invited by the bureau to assist in the development of the economic impact statement for the proposed regulations. Their report will be completed on April 4. The public will have the opportunity to comment on the proposed regulations at a public hearing. A notice of public hearing will be published in **The Kansas Register**.

Some members of the Adult Care Home Advisory Group indicated there appeared to be confusion about administrative oversight for a residential health care facility attached to a nursing facility. The administrator of the nursing facility may also serve as the administrator of the residential health care portion of the facility. There was never any intention of requiring a separate administrator or operator for an assisted living/residential health care facility attached to a nursing facility.

Notification of a Physician

When a resident experiences a medical emergency, the facility is required to notify the physician. Just notifying a physician's office or service of an emergency is not adequate. If a physician does not respond in a timely manner, the facility must use other avenues to obtain appropriate medical care for the resident.

It is imperative that when a medical emergency has occurred the physician, physician's office or service is provided an accurate and informative assessment of the resident. Chart reviews during survey often indicate that the physician was called, but no record is maintained of what information was provided. Physicians report that they are only informed that they need to call the facility.

When the physician does not respond in a timely manner, the facility must act as advocate for the resident in obtaining emergency care. KAR 28-39-155(a)(2) states

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"The facility shall ensure that another physician supervises the medical care of residents when their attending physician is not available." Most attending physicians have another physician who provides coverage in the event the attending physician is not available.

Each facility is required to have a medical director. The medical director is responsible for implementation of resident care policies which reflect accepted standards of practice. The medical director can be a resource for developing policies and procedures for providing emergency care to a resident when the attending physician is not available or fails to respond to a message concerning an emergency.

Operator Course

The Kansas Health Care Association has agreed to accept the responsibility for organizing the first operator course for assisted living/residential health care facilities. A curriculum has been developed. Individuals involved in providing this level of care participated in the development of the curriculum. Information concerning the status of the course has been mailed to all individuals currently identified by the bureau as needing the course to fulfill licensure requirements.

Resident Assessment Instrument

An evaluation of the effectiveness of the RAI trainings using the Department of Education's television network has been performed. It has been decided that this method of education will be discontinued at this time due to the significant problems with the technology.

Statewide training on the MDS 2.0 is planned for late fall. The current plan is to provide training for administrative staff and consultants at two locations. These trainings will be organized by the Kansas Professional Nursing Home Administrators Association. Training in eight locations for staff who perform the RAI will be organized by the Kansas Health Care Association and the Kansas Association of Homes and Services for the Aging. KDHE is very grateful that the associations are willing to take on the responsibility for organizing the training.

In the last few months, RAI workshops have been held or scheduled for groups of facilities. Groups and organizations may contact Patricia Maben at (913)296-1246 if they wish to organize a RAI workshop. Mrs. Maben cannot provide more than one workshop in any one month. Minimum enrollment will be 50 participants.

Foot Care

The following article was prepared by Diane Glynn, RN, JD of the Board of Nursing in response to questions raised by nursing staff concerning when a physician's order is required before providing foot care.

Does hand and foot care, including trimming of nails, etc., require specific physician's order? Is it precluded by any other regulatory act? Three practice areas to consider are cosmetology, podiatry and the practice of medicine.

Cosmetology as defined in state law specifically includes manicure or pedicure or sculpturing nails. Normally, only registered cosmetologist could engage in these activities. There are specific exceptions to this act. Nursing, medicine, dentistry and optometry are specific exceptions to required cosmetology licensure. Therefore, licensed nurses may perform manicures, pedicures and nail sculpture without a cosmetology license when practicing nursing.

Podiatry is defined as the diagnosis and treatment of all illnesses of the human foot. Any activity falling within this definition requires licensure as a podiatrist. The one exception to this licensure is the practice of medicine. If your purpose in providing foot care is treatment or diagnosis, it may be the practice of podiatry. It would, therefore, be precluded unless a nurse were acting pursuant to a physician's order and delegation power.

The practice of medicine and surgery may encompass manicures and pedicures. It also requires licensure. Surgery has

been defined as the severing of tissue of the body for purposes of penetration, for treatment, replacement or removal of affected parts. Nails are tissue and if the purpose you have in cutting them is for treatment or removal of affected parts, you may be practicing surgery. If it is the practice of medicine and surgery physicians may delegate the practice to nurses. Nursing encompasses execution of the medical regimen.

Clearly, if you have a physician's order to follow you may perform pedicures and manicures on patients. For normal hygiene and personal care purposes, hand and foot care may not be a protected practice. In those instances, nurses may be able to practice this as nursing without physician orders. Remember that depending on the purpose it may be protected by other laws. Underlying disease processes (i.e., of a circulatory nature) may be a flag that the patient is at risk and so the prudent nurse may be one that makes contact with a patient's physician before providing care.

Resources for Quality Care

- Nutrition and Your Health: Dietary Guidelines for Americans.

The 1995 version of Dietary Guidelines for Americans was developed jointly by the US Department of Health and Human Services and the Department of Agriculture. This document provides recommendations about food choices which promote health and prevent disease. Revised every five years since 1980, the 1995 edition is the first to be mandated by Congress. Federal agencies are required to promote these guidelines. Reference to these guidelines are found in the Federal **Guidance to Surveyors**. Copies of the guidelines may be obtained from the National Technical Information Service at (703) 487-4650. Publication number is PB 95 265 492.

- Russen-Rondinone, T. and DesRoberts, A. (1996) STIR: Success through individual recreation: Working with the low-functioning resident with dementia or Alzheimer's disease. **The American Journal of Alzheimer's Disease**, Jan/Feb, 32-35.

This article reports on the STIR program which has proven to be successful in meeting social and recreational needs of all levels of individuals afflicted with Alzheimer's disease.

- Jeter, K., and Lutz, J. (1996). Skin care in the frail, elderly, dependent, incontinent patient. **Advances in Wound Care**, Jan/Feb, 29-34.

There is mounting evidence that incontinence, especially fecal incontinence is a primary risk factor for pressure ulcer development. This article discusses the systems currently in use to manage incontinence and the possible effects of these systems on the development of pressure ulcers.

- Cohen, C. et al. (1996). Old problem, different approach: Alternatives to physical restraints. Journal of Gerontological Nursing, 22(2), 23-29.

This article describes alternatives to the use of physical restraints.

- Hofman, L. (Winter 1995/1996). Self-scheduling linked to reduced nurse aide turnover. Insight: Newsletter on Nurse Aides and Assistive Personnel, 4(3), 5-6.

A skilled nursing facility in Philadelphia implemented a self-scheduling, self-staffing model in 1990. The result was a **zero** nurse aide turnover from July 1991 to June 1995.

Health Occupations Update

- Effect of Federal Enforcement Regulations on Nurse Aide Training

Federal enforcement regulations do not allow a nursing facility to conduct a Nurse Aide Training and Competency Evaluation

Program (NATCEP) when the facility has had a partial or extended survey, received a civil money penalty of \$5,000 or more, had a denial of payment, appointment of a temporary manager, been terminated from the Medicare and/or Medicaid program, or has ceased operation.

The Secretary of Health and Environment has approved an administrative policy which allows nursing facilities to serve as a site for clinical instruction when the sponsor of the program is another entity and certain criteria in the policy have been met. Thus far, Health Occupations Credentialing unit (HOC) has received 12 requests. One has been approved, one denied and one is pending receipt of additional information. Nine additional inquiries have been received and information related to the policy was provided by HOC.

Nursing facilities may contact Marcia Boswell-Carney at (913) 296-6647 for information concerning the status of the facility in relation to NATCEP.

- Questions to KDHE from HCFA concerning NATCEP

The HCFA Regional Office recently requested data from HOC concerning nurse aide training in Kansas. The following is a summary of some the questions and answers submitted to HCFA.

1. Number of certified nursing facilities sponsoring NATCEP: 91 facilities sponsored 210 courses in 1995.
2. Number of nursing facilities prohibited from conducting NATCEP due to enforcement actions related to survey: 13 of the 91 facilities which provided courses in 1995 can no longer sponsor training due to enforcement actions.
3. Number of nursing facilities which did not conduct a NATCEP in 1995: Over 200 facilities chose not to conduct NATCEP training in 1995.
4. Educational institutions which conducted NATCEP in 1995:

Community Colleges - 16 conducted 211 courses

Voc/Technical Schools - 12 conducted 94 courses

5. Describe the impact loss of facility-based NATCEP has on individual facilities and the community/State at large:

Nearly 40 percent of the courses offered in 1995 were sponsored by nursing facilities. Facility-based nurse aide training allows flexibility and responsiveness to need. These needs maybe facility-specific or geographic. Educational institutions limit the number and type of course offerings due to a variety of factors. Geographic isolation of some nursing facilities affects the ability of potential students to travel to an educational institution.

Educational institutions maintain enrollment requirements which may cause the cancellation of courses if sufficient enrollment is not attained. These entities must set tuition fees at a level which will cover the costs of the course. Thus candidates who may wish to be nurse aides, but do not have an offer of employment, will be reluctant or be able to assume the cost of the course.

Nurse aide training programs in Kansas are required to provide clinical instruction in an adult care facility. When nursing facilities are prohibited from sponsoring or providing a clinical site for a NATCEP, the availability of potential sites becomes limited. Several counties in Kansas do not have access to community college or voc/technical schools.

The providers most adversely affected by a ban on NATCEP are those located in rural areas. Educational alternatives are scarce and the number of interested candidates for the course maybe limited. This forces facilities into stiff competition for employees and limits the facility's ability to be selective with potential employees.

NOTE: The HOC unit will continue to work with HCFA on issues related to NATCEP training to ensure an adequate supply of qualified nurse aides.

- HOC Changes Policy Related to Personal Checks

HOC will no longer accept personal checks for payment of licensure and certification services. The number personal checks written on accounts with insufficient funds has resulted in increased administrative costs. Therefore, beginning May 1, 1996, the Health Occupations Credentialing Unit will accept only cash, money orders or cashier's checks as payment for license and certification fees. Checks written on corporate accounts will continue to be accepted. This new policy is applicable to individuals renewing their licenses as adult care home administrators, dietitians, speech-language pathologists and audiologists. It also includes certification fees for nurse aides, home health aides and recertification fees for medication aides.

- Special Applause

Health Occupations Credentialing staff applauds the prompt response by facilities in returning the information requested related to the employment of nurse aides. Data entry is almost complete. After validating the data, verification letters for nurse aides will include information required by the Federal government on continuous employment in the previous 24 months.

Facilities have provided HOC with helpful suggestions and information which has enabled staff to follow-up on conflicting data. Some certification problems have been identified as well as potential fraudulent certificates. HOC is grateful for the cooperation of facilities with this project.

- Licensed Nurses and Nurse Aide Requirements

There may be instances which a licensed nurse may decide to limit their practice to the basic nursing tasks which are commonly performed by nurse aides. This is an individual decision of the employer and the licensed nurse. By virtue of their license as a nurse they may perform any nursing task or function they believe they are competent to perform. It is not necessary for a licensed nurse who decides to limit their practice to take the nurse aide course.

Nurses who are not licensed in Kansas, but who are licensed in another state may not perform basic nursing tasks without either obtaining a license from the Kansas State Board of Nursing or successfully completing the Kansas certified nurse aide examination. A licensed nurse in Kansas can be disciplined by the Board of Nursing if they do not meet the standards of practice for their licensure level no matter what level of nursing they are practicing.

- New Regulations

HOC is undertaking the task of updating the regulations for unlicensed staff in adult care homes and long term care units of hospitals. The nurse aide regulations were amended in 1994. Many changes have occurred prompting a total review and selective amendment of the regulations. The general purpose is to provide for a streamline administrative process with quality training outcomes and performance indicators. Consideration is being given to computerized examinations, enhanced training outcomes tracking, strengthened instructor-facility responsibility for training outcomes and greater flexibility in methods of delivery.

Facility administrative staff are encouraged to provide recommendations related to amendments to the nurse aide training regulation, in writing, to the Director of HOC at: 109 SW 9th Street, Mills Bldg, Suite 400B, Topeka, KS 66612-2218 or by facsimile to (913) 296-7025. It is vital that your comments be in writing and received no later than April 15, 1996.

- Continuing Education

HOC is implementing changes to its continuing education accounting methods. Beginning on March 1, 1996 for **Dietitians**,

HOC will no longer maintain computerized records of continuing education. The same change will occur on July 1, 1996 for **Administrators**. Speech Pathologists and Audiologists tracking will continue without change until further notice.

This change will impact licensees in several ways. Licensees will no longer be able to call HOC to check the number of hours credited toward renewal. KDHE will not send out a list of hours with renewal notices. The licensee must keep all information regarding approved hours that they receive, which is sound professional practice. A "transcript" will be mailed with the renewal letter that must be completed showing all hours attended for that licensure period. The transcript is a simple form based on the credit list that HOC currently prints at renewal time. HOC will **audit** a percentage of all transcripts received to guard against fraudulent reporting.

The **Subsequent** and **Prior Approval** processes will **NOT** change. Licensees should still send in subsequent approval applications, and sponsors should still submit prior approval applications. These applications will be approved, assigned a KDHE approval number and returned. **Sponsors will not need to submit rosters to HOC after seminars**, but are still encouraged to use rosters at their sessions. Instead, the **licensee** must receive a pre-signed certificate that has the KDHE approval number.

- Name/Move Change

Please remember to contact HOC whenever you move or your name changes. Renewal forms and other pertinent information may not be received if the address is incorrect.

When renewing your license, all supporting documents must be received prior to the license expiration date. According to department policy, a late fee will be charged for any supporting information received within 30 days after the license has expired. If any supporting information is received more than 30 days after expiration, the licensee must apply for reinstatement, and is subject to the reinstatement fee established by regulation.

- Sponsorship Program

HOC is several steps closer to making the Sponsorship Program for aides a reality. The Sponsorship Program and Sponsorship Coordinator training program are on track to be ready for implementation June 30, 1996. HOC and Kansas Vocational Association are working together to provide a Sponsorship Coordinator training seminar at the KVA annual convention on July 31, 1996 in Wichita. Anyone wishing to receive long term approval for sponsoring Nurse Aide, Home Health Aide or Medication Aide update courses is urged to attend this seminar in order to learn the procedures. More information should be coming soon on the seminar.

- Certified Aides: Nurse, Home Health, Medication

Exam Scheduling, Revisited: Instructors, please send in class rosters as soon as possible. Because test dates or times are not guaranteed, the sooner this office receives your roster, the better the chances will be of obtaining the exam date and time you have requested. All exam sites are **closed** by the 20th of the month, which is approximately two weeks prior to the test date. This time frame allows HOC to process the rosters, schedule the applicants, mail the I.D. slips to the schools and mail information to the proctors administering the exams. **There will be no additional scheduling after the 20th of each month.**

Rosters: If an applicant on the roster has failed to submit all of the requested information, a letter is sent to the applicant advising him/her of the information that is still needed in order to be scheduled for the exam. The instructor will **not** receive an I.D. slip for this applicant and he/she **will** not be assigned a number on the roster. It is the **responsibility of the applicant**, not the instructor, to submit the information to this office in a timely manner. If all requested information is not received by this office prior to the 20th of the month, the applicant will not be scheduled to test with the other applicants on the roster. The student will be scheduled to test on the next available test date.

Please be sure that the I.D. slips are clean, legible copies and filled out completely by the student. If the I.D. slip is incomplete, it will be sent back to be completed, resulting in a delay of test scheduling.

Medication Aide Recertification: To reinstate an expired CMA certificate, the medication aide must complete ten hours of approved CMA continuing education. This will update the certificate. However, it may be appropriate for an individual to relate the 60 hour course of more than five years passed since the CMA has been employed. Regulations are being amended to support a refresher course requirement which would be tailored to the needs of reinstating a certificate. Current regulations are not specific to the issue of reinstating lapsed certificates.

HOC accepts the Pharmacology course that is part of Nursing training in meeting the 10 Hour Medication Aide Update requirement. Those CMA's that are in nursing school may have their instructors contact this office on their behalf in order to obtain a Medication Aide update form.

Nurse Aide Training Fees: Nurse aides who are employed at a Medicare/Medicaid certified facility **may not** be charged for their training, nor may they be required to sign a contract stating they will remain as employees for a certain period or reimburse the facility for training costs. 42 CFR 483.154 (c)(2) states that "no nurse aide who is employed by, or who has received an offer of employment from, a facility on the date on which the aide begins a nurse aide competency evaluation program may be charged for any portion of the program." These practices exceed the federal regulations that HOC is charged to enforce and must be discontinued, and any employees who were charged for training must be reimbursed.

CNA Employment: Please remember students may work as Nurse Aide Trainee II's for four months from the beginning date of the course, regardless of the test date.

- Activity Director and Social Services Designee Courses

All Activity Director and Social Services Designee courses and instructors must be approved by HOC. Please contact Dolores Staab at 913-296-0059 for the applications and instructions for these programs.

ANE ISSUE STATISTICS 12/1/95 to 2/29/96

ANE Investigations

| | |
|-----------------|------------|
| Total | 124 |
| December | 62 |
| January | 82 |
| February | 70 |

Care Issues Investigated

| | |
|-----------------|------------|
| Total | 335 |
| December | 93 |
| January | 121 |
| February | 122 |

Alleged Perpetrators - Administrative Review

| | Total Cases | Pending | Declined | Referred |
|--------------------|-------------|-----------|-----------|-----------|
| ACH Admin. | 1 | 1 | 0 | 1 |
| RNs | 7 | 7 | 0 | 7 |
| LPNs | 8 | 8 | 0 | 8 |
| CNAs/CMAs | 22 | 11 | 11 | 22 |
| MD | 1 | 0 | 1 | 1 |
| Pharmacists | 0 | 0 | 0 | 0 |
| LMHTs | 0 | 0 | 0 | 0 |

Administrative Hearings on CNAs/CMAs

| | |
|-------------------------|------------------------|
| Held | (Not Available) |
| Confirmed | " |
| Unconfirmed | " |
| Pending Decision | " |
| Appeal | " |

*Licensure Category

Civil Penalties

Correction Orders

| | 1995 Quarters | | | | | | | |
|--|---------------|-----|-----|-----|-----|-----|-----|-----|
| | 1st | 2nd | 3rd | 4th | 1st | 2nd | 3rd | 4th |
| Inadequate or inappropriate hygiene and skin care | 1 | 4 | 8 | 5 | 15 | 25 | 18 | 19 |
| Inadequate or unqualified staffing | 2 | 3 | 3 | 2 | 3 | 5 | 12 | 16 |
| Inoperable or inaccessible call system | - | 1 | - | - | 1 | 0 | 2 | 1 |
| Inappropriate or unauthorized use of restraints | - | - | 2 | - | 17 | 20 | 17 | 11 |
| Unsafe medication administration or storage | 3 | - | - | - | 7 | 5 | 3 | 4 |
| Inadequate nursing services other than skin care | 3 | 2 | 3 | 4 | 13 | 12 | 18 | 19 |
| Inadequate or inappropriate asepsis technique | - | - | 2 | - | 6 | 12 | 5 | 4 |
| Inadequate or inappropriate dietary/nutritional services | 1 | - | 2 | 1 | 6 | 9 | 8 | 10 |
| Unsafe storage of hazardous or toxic substances | - | - | - | - | 2 | 1 | 3 | 2 |
| Failure to maintain equipment | - | - | 2 | - | 2 | 4 | 2 | - |
| Resident right violations | 1 | 2 | 4 | 3 | 3 | 8 | 10 | 9 |
| Unsafe high water temperature | - | - | - | - | 3 | 0 | 1 | 3 |
| Inadequate hot water | - | - | - | - | - | 0 | - | - |
| General sanitation and safety | - | - | 2 | - | 4 | 4 | 1 | 1 |
| Other (including inappropriate admission) | - | 2 | 3 | - | 2 | 2 | 6 | 5 |
| Inadequate rehabilitation services | - | - | - | - | - | 0 | - | - |
| Civil Penalties | 8 | 10 | 13 | 12 | | | | |
| Correction Orders | | | | | 37 | 45 | 47 | 37 |
| Bans on Admission | 3 | 5 | 4 | 2 | | | | |
| Denials | 1 | 1 | 1 | 0 | | | | |

* A correction order or civil penalty may consist of multiple issues summarized within the licensure categories above.